



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$1650.00 and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- I signed the agreement to start renting this unit for April 1, 2012, however I was working out of town and so did not get back until April 16, 2012.
- I contacted the landlord he told me I could not get my keys until the 17th as he was still painting and therefore we arranged to meet on April 17, 2012.

- When I met with the landlord on the 17th to get the keys he informed me that the washer did not work but he was looking for a repair man to get it fixed as soon as possible. I do not know why he could not have had it fixed in the two weeks prior since my tenancy technically started on April 1, 2012.
- No walk-through was done and after the landlord left I found the following problems with the unit:
 - Every wall in the apartment had scuff marks or black marks.
 - The bathroom still had hair and watermarks.
 - The dishwasher still had food in it.
 - This stove was greasy and unclean.
 - There was still some of the previous tenant's property in the closets.
 - There was plaster dust on the floor from where the landlord had been sanding.
 - Holes in the walls had been tidied but not yet painted.
 - Some areas had been spot painted but the paint was a mismatch.
 - There were cracks in the drywall.
 - The bedroom carpet was stained.
 - The washer did not work.
 - And the main blind in the living room was broken and one side would not move up and down.
- He could not understand why the landlord had not prepared the unit ready for him to move in and therefore he asked for a meeting with the landlord to see if the move-in date could be changed to May 1, 2012.
- The landlord told me my complaints were "baby" and would not agree to change the move-in date to May 1, 2012.
- I told him I was not going to move into the place since it was not ready for me and I was not about to pay for something that was not ready to move into.
- The landlord spoke to his partner and we agreed that I would just walk out of the lease and he would rent it to someone else.

- The landlord took back the keys and said he would not be giving you back my first month's rent or my damage deposit.
- I had given the landlord post-dated cheques, and the landlord subsequently cashed a second months rent cheque.
- I am therefore requesting the return of my security deposit, and the two months' rent.

The respondent testified that:

- The tenant did sign a lease beginning April 1, 2012; however the tenant said he was not able to move in at that time.
- He had fully planned to get the cleaning and repairs to the apartment completed before the tenant moved in, however he ended up having to have surgery on his hand and that made it difficult for him to do the work.
- When he met with the tenant on April 17 he did inform the tenant of the washer was not working, but that it would be repaired as soon as possible.
- When the tenant called him back for meeting and had nothing but complaints about the unit, he told the tenant that he was fully willing to rectify all the issues however this did not satisfy the tenant, and therefore he asked the tenant if what he really wanted was out of the lease, and the tenants said yes.
- Since he could not force the tenant to take the rental unit, he asked him for the keys back and told the tenant that he would re-rent the unit.
- He also told the tenant that he would keep the security deposit and the first month's rent, because, at that time, he had not re-rented the unit and he believed that he had the right to keep this to cover his losses.
- All the tenants' complaints were rectified very quickly and could easily have been done with the tenant in the rental unit.
- The apartment was re-rented for the middle of the following month.
- The second rental cheque was deposited by his bank in error, and he is certainly willing to return that money to the tenant.

Analysis

Security deposit

The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get written permission from the tenants to keep the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The tenant has applied for the return of the security deposit; however the tenant did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for dispute resolution.

Therefore at the time that the tenant applied for dispute resolution, the landlord was under no obligation to return the security deposit and therefore this application is premature.

I therefore dismiss the claim for return of the security deposit with leave to reapply.

At the hearing the tenant stated that the address on the application for dispute resolution is the present forwarding address; therefore the landlord is now considered to have received the forwarding address in writing as of today August 16, 2012.

Return of rent

It is my decision that I will not order the return of the first month's rent that the tenant paid for the month of April 2012.

If the tenant feels the landlord has breached the tenancy agreement the tenant does have the right to end the tenancy under certain conditions however it is my finding that in this case the tenant did not meet those conditions.

Section 45(3) of the Residential Tenancy Act states:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case the tenant did not give the landlord any written notice, nor did he give the landlord a reasonable time to correct the problems.

Therefore the tenant did not have the right to end this tenancy without giving the required Notice to End Tenancy and I therefore am not willing to order the return of the April 2012 rent.

I will order the return of the May 2012 rent, because the landlord testified at the hearing that that money was inadvertently deposit to his bank account and that he fully intends to return it.

Conclusion

As stated above the request for the return of the security deposit is dismissed with leave to reapply.

The claim for the return of April 2012 rent is dismissed without leave to reapply.

I have issued an order for the landlord to return the \$1100.00 May 2012 rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 16, 2012.

Residential Tenancy Branch